

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**WEST VIRGINIA HIGHLANDS
CONSERVANCY and SIERRA CLUB,**

Plaintiffs,

and

UNITED STATES OF AMERICA,

An interested party,

v.

**Civil Action No. 2:19-CV-41
(KLEEH)**

BROOKS RUN MINING COMPANY, LLC,

Defendant.

MOTION TO COMPEL

Comes now the United States of America, by and through undersigned counsel, and pursuant to LR Civ P 37.02 and Fed. R. Civ. P. 37, hereby moves this Court for an order compelling Defendant, Birch River Energy, LLC f/k/a Brooks Run Mining Company, LLC, to provide responses to the written discovery propounded by the United States.

1. On September 22, 2022, this Court entered an Order [ECF No. 41] granting Plaintiffs' motion for attorneys' fees [ECF No. 37] and a motion for civil penalties [ECF No. 39] thereby awarding attorneys' fees to Plaintiffs in the amount of \$41,212.25 and expenses in the amount of \$1,949.58, for a total of \$43,161.83 to be paid by the Defendant, Brooks Run Mining Company, LLC, a Delaware limited liability company. Further, the Court found the Defendant subject to a civil penalty of \$649,500.00. *See* ECF No. 41.

2. To date, Defendant has made no payments on the judgment debt and has ignored all communication efforts made by the United States.

3. On April 26, 2023, in an effort to collect on the aforementioned judgment, the United States sent its First Set of Interrogatories and Requests for Production of Documents to Defendant through counsel of record as reflected on the docket. *See* ECF No. 47.

4. The United States received no responses or communication of any kind in regard to the interrogatories and document requests.

5. On May 30, 2023, the United States sent a letter to Defendant, via counsel of record as reflected on the docket, inquiring as to when responses could be expected. *See* Exhibit A, USAO letter to defense counsel dated May 30, 2023.

6. No response to the letter was received.

7. On August 3, 2023, the United States propounded subsequent written discovery requests to Defendant via certified mail at its notice of process address per the West Virginia Secretary of State and to the attention of Defendant's solely listed officer, William K. Abraham. *See* ECF No. 51; *see also* Exhibit B, discovery requests dated August 3, 2023; Exhibit C, USAO letter to Abraham dated August 3, 2023.

8. The discovery requests were served and signed for on August 7, 2023. *See* Exhibit D, return receipt dated August 7, 2023. Therefore, responses to the interrogatories and document requests were due on September 7, 2023, 30 days after service. Defendant has not responded to the August 3 discovery requests, nor has Defendant contacted the United States regarding the outstanding discovery.

9. Pursuant to Fed. R. Civ. P. 37, undersigned counsel certifies that the United States has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action. As required by LR Civ P 26.04(b), the United States sent a letter to Mr. Abraham, Defendant's officer, asking to confer by

phone regarding the pending discovery requests. *See* Exhibit E, USAO letter to Abraham dated September 6, 2023

10. As of the filing of this Motion, no response to the letter has been received.

11. Fed. R. Civ. P. 37(a)(2)(B) provides that, if a party fails to answer discovery, the discovering party may move for an order compelling responses. Defendant has ignored its' obligations under the Federal Rules of Civil Procedure to provide complete responses to the United States' discovery requests. An order compelling Defendant to respond is mandated by its' actions.

12. Pursuant to LR Civ P 37.02(b), this Motion is filed within thirty (30) days after the discovery responses sought were due.

Wherefore, the United States moves this Court for an order compelling the Defendant to provide responses to the outstanding interrogatories and document requests served upon Defendant on August 3, 2023.

WILLIAM IHLENFELD
UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I hereby certify that, on September 22, 2023, I electronically filed the foregoing **MOTION TO COMPEL** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

I hereby certify that, on September 22, 2023, I furnished a true and accurate copy of the foregoing **MOTION TO COMPEL** for delivery via certified mail, return receipt requested, to:

Birch River Energy, LLC
c/o William K. Abraham
2691 Little Birch Road
Sutton, WV 26601

By: /s/ Maximillian F. Nogay